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SUBJECT: Third Uribe Term Increasingly Likely

REF: 09 BOGOTA 3621

CLASSIFIED BY: William R. Brownfield, Ambassador; REASON: 1.4(B), (D)

Summary

1. (C) President Uribe took another step toward a third term with his January 20 decision to adhere to restrictions designed to level the playing field between an incumbent president and his/her competitors. As expected, the Inspector General recommended January 12 that the Constitutional Court allow the reelection referendum to proceed. While the Court has until April to render its decision (a month before the May 30 presidential election), the Court President and observers expect the Court to decide this month, as the issue has been debated for years and the sooner it is resolved, the sooner the election cycle can begin to normalize. No one knows how the Court will rule. If the Court does permit the referendum, proponents of a third term will have to overcome an abstention campaign by the opposition to ensure that at least 7.46 million Colombians turn out to vote. Time is also a factor, as the Court decision and the organization of a special referendum must take place before the May 9 deadline to modify candidate lists for the May 30 presidential election. Opponents of a third term cite corruption concerns and the serious deterioration of institutional checks and balances caused by the constitutional modification that allowed Uribe a second term. However, given the political capital expended thus far, recent polls, opposition candidates' expectations, and the referendum's repeated resuscitations, the sense here is that President Uribe will likely run again. End Summary.

IG Recommends Allowing

Referendums to Proceed

2. (SBU) Inspector General Alejandro Ordonez submitted his required but non-binding report on the reelection referendum to the

Constitutional Court on January 12 -- two weeks before the deadline. As expected, he recommended that the Court allow the referendum to proceed. He argued that procedural irregularities did not affect "the expression of the people," represented by the more than 4 million signatures collected to launch the referendum process. In his 53-page report, Ordonez pointed out some flaws in the referendum process, such as the exceeding of spending limits for the signature collection drive, the calling of extra congressional sessions without first publishing a notice in the federal register, and legislators voting in favor of the referendum despite their parties' opposition. He said those who violated regulations could be individually sanctioned, but that their acts should not prevent the question of amending the Constitution to allow a third consecutive presidential term from being presented to the people. Ordonez also said President Uribe "should abide by the restrictions and prohibitions" imposed by the Law of Guarantees of 2005, which seeks to minimize a sitting president's electoral advantage. He specifically urged the President to stop televising his weekly town hall meetings.

13. (SBU) Separately, on January 20, Ordonez sanctioned a congressionally-initiated referendum permitting life sentences in cases involving the rape, kidnapping or murder of minors (under 14). The Constitutional Court also has the final say on whether this initiative will go forward. If the Court permits this and the reelection referendum, they would likely be presented for a public vote simultaneously -- reducing costs and possibly increasing voter turnout.

President Uribe Signals Desire to Run,
Opposition Decries Unlevel Playing Field

14. (SBU) The GOC immediately accepted Ordonez' report on the reelection referendum and, on January 20, the Office of the President announced that TV broadcasts of President Uribe's town hall meetings would cease in order to comply with the Law of Guarantees and Ordonez' recommendations. The Law stipulates that a sitting president-candidate can not: attend inaugurations of public works, personally deliver state funds or resources, refer to other candidates or movements in public presentations as president, or use state funds for his/her campaign (including travel solely for campaign purposes). Furthermore, if the President is seeking reelection, during the four months prior to May 30 the GOC can not hire new personnel or engage in direct state contracting. Although President Uribe said Ordonez' recommendations would be stringently followed, it is unclear if the GOC has decided to abide by all of the Law of Guarantees' restrictions.

15. (SBU) Uribe has thus far been careful not to unequivocally announce his intent to run because, unless the referendum is approved, the Constitution does not permit him to be a candidate. Virtually everyone interpreted his move to comply with at least some Law of Guarantees provisions as the clearest signal yet that Uribe would indeed run for a third term if possible. News daily "El Espectador" also reported that the bank account used for Uribe's first reelection campaign in 2006 had been reopened. While some observers praised the President's signal as a step towards ending the uncertainty that has paralyzed national politics, most opposition politicians were not satisfied with the cessation of TV broadcasts and called on President Uribe to comply with all of the restrictions enumerated in the Law of Guarantees.

Constitutional Court Holds the Key

¶6. (SBU) Whether the reelection referendum will be held depends solely on the Constitutional Court. Last year, the Court elected one of its judges, Humberto Sierra (a constitutional law expert named to the Court by the State Council in 2004 and considered to be independent of President Uribe), to prepare a detailed legal analysis of the referendum process for the full, nine-member Court's consideration. Sierra had a deadline of 30 working days from Ordóñez's submission to file his analysis, but presented his report to a closed session of the Court on February 3. The full Court has a maximum of 60 working days from Sierra's filing to render its final verdict, meaning its decision could come just a month before the May 30 election if the Court takes its full time. However, Constitutional Court President Nilson Pinilla has said the ruling is likely "very soon" since the Court has been studying the matter since December. Before voting, the Court must decide whether one of its judges must abstain from the referendum decision because his ex-wife performed consulting work for the GOC.

¶7. (SBU) How the Court will vote remains a mystery. Anecdotes indicate a near 50-50 split, and even some judges who were appointed by Uribe coalition forces are seen as independent. The Court allowed the first reelection referendum in 2006, and can cite

the Inspector General's report and not blocking an expression of "the will of the people" in allowing the referendum to proceed. However, when the Constitutional Court approved the first reelection in 2006, its decision stated that the spirit of the Constitution was not jeopardized as long as reelection was only allowed once (maximum two terms). Although it is most likely the Court will base its decision on whether this convoluted referendum procedure was clean, the Court could argue that a third consecutive presidential term would "substitute" the Constitution and destroy its checks and balances (see below).

Other Remaining Obstacles:

Voter Turnout & Time

¶8. (SBU) If the Constitutional Court permits the referendum, the biggest challenge for proponents will be securing the required turnout of 25% of the electorate. Based on current Registrar census figures, this would mean that 7.46 million of Colombia's 29.84 million eligible voters would have to make the effort to vote on a special election day. Opposition parties, cognizant that the majority of voters who show up would support a third term, have already promised a national abstention campaign. Given the compressed timeline, the abstention campaign would have to gain steam quickly to succeed.

¶9. (SBU) Time is another challenge: after the Constitutional Court makes its decision, the Registrar must organize the special election. The Registrar has publicly said he would need two or three months to prepare the referendum, and has complained of a lack of funds. Opposition and coalition parties agree that it would be impossible to postpone the date of the May 30 presidential election, as that would require a congressionally-initiated change to the Constitution which takes about a year's worth of debate.

A Third Consecutive Term's

Effects on Checks & Balances

¶10. (SBU) Opponents of a third consecutive presidential term cite the deterioration of democratic institutions designed for a single four-year presidency as their most serious concern. Perhaps the best and most widely cited study of this deterioration was published by Colombian NGO DeJusticia last September. In addition to citing the Uribe coalition's majority in both the House and Senate, the 400-page study analyzed 14 institutions that were designed to be independent or quasi-independent checks on the Executive.

¶11. (SBU) When Uribe first took office in 2002, all 14 institutions were completely independent (a majority of its heads were not named by the President and did not form part of his political coalition, or the President had no role in the naming of the individuals, and the institution had not displayed favoritism for GOC policies and officials). At the end of his first term (2006), nine of the institutions were still independent, four were "partly under the influence" of the President (a majority of its heads were named by him or formed part of his political coalition, but had not displayed favoritism for GOC policies and officials), and one, the

Human Rights Ombudsman, had been "co-opted" (its head was named by the President or formed part of his political coalition, and displayed favoritism for GOC policies and officials). Once the Constitution was modified to allow a second term, the checks and balances quickly deteriorated. By the final months of Uribe's second term (2010), only five of the institutions remained independent, seven were partly under the President's influence, and two had been co-opted (the Human Rights Ombudsman and the Superior Judicial Council's Disciplinary Court).

¶12. (C) Assuming there are no changes to the Constitution that affect the institutional relationships and nomination procedures, the situation at the end of a possible third term (2014) would be about the same as in 2010. Neither the executive nor legislative branches select the leaders of the five remaining independent entities (the Supreme Court, the Superior Judicial Council's Administrative Court, the State Council, the Registrar, and the Auditor) so they should remain independent even with a third consecutive term. The Supreme Court has been the most steadfast check to the Uribe Administration, as exemplified by the continuing standoff on naming a new Prosecutor General, and could continue that role if there is a third term. However, constitutionalists fear that prolonging the status quo of concentrated executive power will continue to damage democratic institutions. Furthermore, an increasingly powerful executive with a legislative majority could seek additional constitutional changes, further consolidating power. For example, U Party Senate candidate Juan Felipe Campuzano has proposed that the Congress modify the Constitution to allow the President to select the Prosecutor General directly, without Supreme Court approval. Finally, the longer an administration is in power, the greater the chances for an accumulation of corruption and clientelism.

COMMENT

¶13. (C) Uribe remains extraordinarily popular with an electorate grateful for his security gains and economic management. His persistent movement towards another run for the presidency continues to dominate politics and create uncertainty for politicians of all stripes. The Constitutional Court is the only entity capable of preventing the referendum from being held, as the Registrar's demands for time and money can be overcome. The Constitutional Court will likely approve of the referendum, though the magistrates are reportedly still divided on the issue. In the end, they will probably join others in not standing in the way of a decision by the people. Polls currently show that if the

referendum were held today, the required turnout would be met and most voters would support a third term. Uribe enjoys a job approval rating of over 70%, but is significantly weaker on corruption (48% disapprove of his handling of corruption) and economic issues (46% disapprove) -- particularly unemployment (70% disapprove) and the cost of living (58% disapprove). While it is conceivable a major scandal or worsening economic trends could thwart a reelection bid, Uribe remains the prohibitive favorite should he decide to run again.

BROWNFIELD